

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Highland Cellular)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of Virginia)	
)	
To: Wireline Competition Bureau)	

COMMENTS OF VERIZON¹

The Commission should deny Highland Cellular’s petition for Eligible Telecommunications Carrier (“ETC”) status in six of the seven service areas of Verizon South for which it seeks designation. The petition erroneously classifies the Verizon South territories as “*Non-Rural* LEC Wire Centers For Immediate Designation.”² However, six of these wire centers are within a study area for which Verizon South is a *rural* telecommunications carrier. Thus, the Commission cannot grant “immediate designation” of ETC status in those rural areas. Rather, Highland must make the same showing that it must for any rural ILEC – *i.e.*, that it would be in the public interest for the Commission to designate an additional ETC in these areas. In addition, because Highland Cellular is seeking ETC status for only “a portion” of these areas,³ rather than the entire service area served by the rural ILEC, it must request a redefinition of the

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

² Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at Exhibit D (Sept. 19, 2002) (“Petition”) (emphasis added).

³ Petition, at 10.

service area, and show that granting ETC status for only that “portion” would be in the public interest. Because Highland Cellular wrongly concluded that the Verizon South territories were non-rural, it did not even attempt to make such a showing.

As several parties have argued in other proceedings, the Commission should initiate a rulemaking proceeding to investigate ways to ensure that high cost funds are not being used to fund investment that is not in the “public interest,” and to close loopholes in the program that invite waste or abuse. In particular, the Commission should ensure that its regulations (and the application and enforcement of those regulations) do not create incentives or opportunities for competitors to use high cost funds to support services to only the lowest-cost customers.

Because many of the issues presented by the Highland Cellular petition are at the heart of the debate about what the Commission’s rules regarding high cost support should be, the Commission should stay a ruling on the Highland Cellular petition until after it has had a chance to complete this broader rulemaking proceeding on high cost support.

I. The Petition Wrongly States that Six of the Seven Verizon Wire Centers Are Non-Rural, and Fails To Make the Necessary Showing for ETC Designation in these Rural Areas

Highland Cellular argues that the Commission “may designate Highland Cellular as an ETC in the area that Highland Cellular serves, without redefining the service areas of Verizon South” because “[i]n areas served by a non-rural local exchange carrier, there are no restrictions on how a state commission defines a competitive ETC’s ‘service area.’” Petition at 10. The problem with that argument is that six of the seven areas that Highland Cellular asserts are *non-rural* are, in fact, *rural*. Specifically, other than the wire center for Honaker (HNKRVAXA), all of the wire centers that Highland Cellular lists in “Exhibit D – Non-Rural LEC Wire Centers For

Immediate Designation” are within the study area for GTE South Inc. – VA (SAC 190479), which is classified as a rural study area pursuant to Commission rules.⁴

Because these wire centers are within a rural service area, Highland Cellular must undertake the same requirements for meeting ETC status as in other rural areas. In particular, Highland Cellular must demonstrate that granting ETC status in these areas would be in the “public interest.”⁵ Moreover, because the petition states that Highland Cellular wishes to serve only “a portion of the areas served by Verizon South, Inc,” Petition at 10, Highland Cellular must describe the geographic area in which it requests designation, and demonstrate that designation within this portion is in the “public interest” and consistent with the factors set forth by the Federal-State Joint Board.⁶ Because Highland Cellular has not even attempted to meet these requirements, the Commission should deny designation of ETC status in the Verizon rural service areas.

II. The Commission Should Stay a Ruling on Highland Cellular’s Petition, and on Similar Pending Petitions, Until After it Has Conducted a Rulemaking Proceeding on High Cost Fund Issues

The Commission already has recognized that over the past several years there has been “increasing upward pressure” on universal service contributions. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, FCC 02-175, ¶ 2

⁴ Commission rules state that, to the extent a carrier’s study area serves less than 50,000 access lines, it will be considered a rural telephone company. *See* 47 C.F.R. § 51.5. *See generally Commission Acknowledges Receipt of Letters Self-Certifying LECs as Rural Telephone Companies*, 13 FCC Rcd 12096, Attachment 1 at 14 (1998) (listing GTE South – Virginia as one of the carriers having filed a letter self-certifying that it has study areas that meet the statutory definition of “rural”).

⁵ *See* 47 U.S.C. § 214(e)(6) (“Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest”).

⁶ *See* 47 U.S.C. § 214(e)(5) & (6).

(rel. June 13, 2002). As Commissioner Powell has recently recognized, “the cost of these [universal service] programs is ultimately borne by American consumers. Accordingly, . . . we must balance the needs of funding these programs against the real burden that our contribution requirements could impose on consumers if we do not manage those requirements carefully.”⁷ The Commission should monitor the universal service fund closely, including the high cost portion of the fund, to eliminate any growth that is unnecessary. In keeping with that goal, it should determine whether revisions to current rules are necessary before it grants the petition of Highland Cellular or similar carriers seeking ETC status in only a “portion” of disaggregated rural areas, which could cause inefficient investment of high cost dollars.

As Verizon and others pointed out in comments to the NTCA petition, the Commission should promptly initiate a proceeding to reexamine the rules regarding high cost support.⁸ In particular, it should reexamine its “portability” rules for support to competing carriers, as well as the rules regarding whether a competing carrier can receive ETC status for an area different than that served by the incumbent LEC, as both of these situations may be creating incentives for inefficient investment.⁹ Because Highland Cellular’s petition hinges precisely on the types of issues that the Commission should reexamine in a broader rulemaking proceeding, the

⁷ *Schools and Libraries Support Order*, Separate Statement of Chairman Michael K. Powell Approving in Part and Concurring in Part.

⁸ See Verizon Comments, *Petition for Rulemaking to Define “Captured” and “New” Subscriber Lines For Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. § 54.307 et seq.*, RM-10522 (filed Sept. 23, 2002) (“*Verizon Comments to NTCA Petition*”); Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, RM-10522, at 2 (filed Sept. 9, 2002); Comments of the Minnesota Independent Coalition, RM-10522, at 3 (filed Sept. 9, 2002); Comments of Sprint Corporation, RM-10522, at 3 (filed Sept. 23, 2002).

⁹ See Verizon Comments to NTCA Petition, at 4. The Commission’s “portability” rules are those allowing a competitive carrier to receive the same per-line cost support as the incumbent, regardless of the competitor’s costs.

Commission should stay a ruling on the petition until it has had a chance to review its rules regarding high cost support.

The request presented in Highland Cellular’s petition – a carrier seeking designation of ETC status to serve an area different than that served by the incumbent rural LEC – is one of the primary opportunities in the Commission’s current rules that presents the potential for regulatory arbitrage. That is because, while the LEC must serve *all* customers in the high cost territory, a carrier serving a smaller service area potentially may hand pick customers in only the most cost-effective areas, and thus receive the area-wide average high cost support for serving only the lowest cost customers.

The Commission attempted to alleviate this problem of selective service (which the Joint Board referred to as “cream skimming”) by giving rural incumbent carriers the option of “disaggregating” their territory – that is, to “depart from study area averaging and instead disaggregate and target per-line high-cost universal service support, including high-cost loop support, LTS, and LSS, into geographic areas below the study area level.”¹⁰ However, while the Commission recognized the benefits of targeting support on a disaggregated basis, it also found that rural incumbent carriers should have “flexibility” to determine whether or not to disaggregate. *Id.*, ¶ 146. Thus, if a rural carrier chooses not to disaggregate support, and a competitor receives the study-area averaged high cost support rate for serving only a portion of the rural incumbent’s territory, it is very possible that the competitor may receive higher levels of

¹⁰ *Federal-State Joint Board on Universal Service*, Fourteenth Universal Service Order, 16 FCC Rcd 11244, ¶ 137; ¶¶ 144-145 (2001) (“*Fourteenth Universal Service Order*”).

support than are warranted.¹¹ Because this inefficient funding increases costs to the universal service fund, it impacts not just the rural ILEC who chooses not to disaggregate, but also all carriers and customers who contribute to universal service.

Highland Cellular is simply incorrect in arguing that in areas where rural carriers have chosen not to disaggregate service areas, the Commission does not need “to consider whether the competitive carrier is attempting to ‘cream skim’ by only proposing to serve the lowest cost exchanges.”¹² The argument Highland Cellular advances – that “any incumbent LEC that has elected not to disaggregate support must not be concerned about cream skimming in its particular area,” *id.* at 14, – is overly simplistic and appears to assume that if the rural ILEC is not harmed, no one is. As an initial matter, the decision whether or not to disaggregate is based on several factors, not simply an ILEC’s concerns about potential competitors. For example, as the Commission recognized when allowing rural ILECs the ability to opt out of disaggregation, there may be significant cost concerns that cause a carrier to choose not to disaggregate.¹³ And even assuming that a rural incumbent LEC was “not concerned about” another competitor picking and choosing to serve only the lowest cost customers when the LEC decided not to disaggregate support, that does not mean that it cannot properly object if such an opportunistic competitor

¹¹ Although the Commission opined that Commission rules allowing rural telephone companies to “disaggregate” their study areas had “substantially eliminated” concern about this type of regulatory arbitrage, the reality is that due to uncertainties about how future levels of support would be calculated, many rural incumbent carriers chose *not* to disaggregate support. *See Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, 16 FCC Rcd 19144, ¶ 12 (2001); McLean & Brown, Issue Update, “USF Portability – Getting it Right,” at 7 (June 25, 2002). And once a rural incumbent carrier has made a choice not to disaggregate, it cannot change that decision unless it receives approval from regulators. *Fourteenth Universal Service Order*, ¶¶ 147-149.

¹² Petition at 13 (citing *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, at 180 (1996)).

¹³ *Fourteenth Universal Service Order*, ¶¶ 146, 148.

does appear and request ETC status. Moreover, regardless of the rural ILEC's concerns, such cream skimming opportunities hurt many more people than just the incumbent LEC that is serving customers in the area. Allowing competing carriers to receive high cost support by serving only the lowest cost customers would waste universal service funds, increasing the burden on those who contribute to the universal service program, and potentially taking funds away from places where the funding is more needed.

Conclusion

The Commission should deny Highland Cellular's petition for ETC status in most of the Verizon South territories, because it has failed to make the requisite showing that such designation would be in the public interest. In addition, it should initiate a rulemaking proceeding to invite ways to limit the growth of the high cost fund, and to eliminate incentives for uneconomic investment. Until that rulemaking proceeding has concluded, it should stay ruling on Highland Cellular's petition, and on similar ETC petitions from other carriers.

Respectfully submitted,



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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.